BEFORE THE

Federal Communications Commission

WASHINGTON, D.C 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

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To: The Commission

COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

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073

TABLE OF CONTENTS

SUMMARY

The American Petroleum Institute commends the Federal Communications Commission for the issuance of a comprehensive Notice of Proposed Rulemaking that largely conforms to the Congressional policies enunciated in the Telecommunications Act of 1996. In these comments, API addresses two of the many issues explored by the Commission.

First, API urges the Commission to withdraw its tentative conclusion regarding Section 251(c)(2)(A), discussed in Section II.B.2.e.(1). Under the Commission's interpretation, clause (A) precludes interexchange carriers from obtaining interconnection under Section 251(c)(2) for the purpose of originating or terminating interexchange traffic. The erroneous interpretation erects a competitive barrier where none was envisioned - a barrier which the Commission recognizes is ultimately unsustainable. This interpretation is inconsistent with both the 1996 Act and the policies it seeks to promote.

The proper interpretation of clause (A) is that it pertains only to the operations of the incumbent local exchange carrier, as do clauses (B), (C), and (D). It identifies those telecommunications services that have been monopolized by incumbent LECs in virtually all local markets

and which Congress intended be made available to competitors by interconnection. The proper interpretation ensures that existing monopoly services do not remain insulated from competition.

Because the 1996 Act safeguards the economic health of rural and small incumbent LECs, the Commission may properly construe clause (A) without endangering universal service. If a rural or small carrier finds it "unduly economically burdensome" to forego receipt of Part 69 access charges, it may seek an exemption, suspension, or modification of the Commission's rules pursuant to Section 251(f).

Ultimately, the Commission's tentative conclusion regarding Section 251(c)(2)(A) is fundamentally inconsistent with consumer interests since it ensures that long-distance rates remain inflated and that customer choices remain compartmentalized and fragmented.

API's second issue concerns the Commission's proposal to adopt explicit national rules, addressed in Section II.A. API supports that proposal and agrees with the Commission that it will promote competitive entry and produce significant cost efficiencies for all service providers, including incumbent LECs.

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COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), by its attorneys, hereby submits its Comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted in the instant proceeding on April 19, 1996 by the Federal Communications Commission ("Commission"), FCC 96-182 (released on April 19, 1996).

API is a national trade association representing over 300 companies involved in all aspects of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum,

petroleum products, and natural gas. Among its many activities, API acts on behalf of its members as a spokesperson before federal and state regulatory agencies and legislative bodies.[1/]

I. COMMENTS REGARDING SECTION II.B.2.e.(1): Interexchange Services

Incumbent LECs Must Provide Interconnection Pursuant to Section 251(c)(2) To Any Requesting Carrier For Any Purpose.

The Commission tentatively concludes that the interconnection obligation of incumbent local exchange carriers ("LECs") pursuant to Section 251(c)(2) is limited by the purpose for which interconnection is sought. Specifically, it does not extend to carriers requesting interconnection "for the purpose of originating or terminating interexchange traffic."[2/]

While ostensibly premised on language in clause (A) pertaining to "the transmission and routing of telephone exchange service and exchange access," this tentative conclusion reflects an overly restrictive reading of the

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[1/] The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

[2/] NPRM at para. 161.

Act. That reading is inconsistent with both the statutory language of the Telecommunications Act of 1996 ("1996 Act") and the policies it seeks to promote.

A. Clause (A) Refers To Services Offered By The Incumbent LEC, Not Those That Must Be Offered By "Any Requesting Telecommunications Carrier."

Section 251(c)(2) identifies interconnection as one of the duties owed by an incumbent LEC. That duty, according to explicit statutory language in paragraph (2), is owed to "any requesting telecommunications carrier." The Commission correctly recognizes that it is a duty owed to, among others, interexchange carriers ("IXCs").[3/]

The Commission errs, however, in tentatively concluding that clause (A) limits the scope of the incumbent LEC's obligation to "any requesting telecommunications carrier." Under its interpretation, the incumbent LEC must provide requesting carriers with interconnection only "where the request is for the 'transmission and routing of telephone exchange service and exchange access.''[4/] Such an interpretation impermissibly reads into clause (A) a

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[3/] NPRM at Para. 159. Though these comments do not specifically address the issues raised with respect to Commercial Mobile Radio Services in paragraphs 166-169 of the NPRM, the conclusion is the same: the incumbent LEC's interconnection obligations extend to "any requesting carrier," as the statutory language provides.

[4/] NPRM at Para. 160.

restriction rooted in the operations of the requesting carrier.

Clauses (A), (B), (C), and (D) of Section 251(c)(2) address matters pertinent only to the incumbent LEC. Nothing in the statute suggests that these clauses are applicable to the operations of "any requesting telecommunications carrier." Indeed, elsewhere in its NPRM the Commission acknowledges that clauses (B), (C), and (D) pertain only to the incumbent LEC:

- "Subsection (c)(2)(B) requires that incumbent LECs provide interconnection 'at any technically feasible point within the [incumbent LEC's] network.'"[5/]
- "Section 251(c)(2)(C) requires that the interconnection provided by the incumbent LEC be 'at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.'"[6/]
- "Section 251(c)(2)(D) requires that interconnection provided by the incumbent LEC be

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5/ NPRM at Para. 56.

6/ NPRM at Para. 63.

'on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.'"[7/]

Given the Commission's express recognition that clauses (B), (C), and (D) pertain only to incumbent LECs, in the absence of explicit statutory directive to the contrary clause (A) must be construed to pertain only to the incumbent LEC, as well. Specifically, clause (A) should be construed to identify those telecommunications services that have been monopolized by incumbent LECs in virtually all markets. In other words, it defines the services which Congress intended the incumbent LEC make available to competitors through the mechanism of interconnection.[8/]

The Commission's erroneous interpretation of clause (A) gives rise to the multiplicity of possible interpretations discussed in Paragraph 162 of the NPRM and the strained reasoning of Paragraph 164. The erroneous interpretation, moreover, is inconsistent with the Commission's conclusion that, under Section 251(c)(3), "carriers may request unbundled elements for purposes of originating and terminating interexchange toll traffic, in addition to whatever other services the carrier wishes to provide over

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[7/] NPRM at Para. 60.

[8/] Incumbent LECs possess an approximate 99.7 percent share of the local market as measured by revenues. NPRM at Para. 6.

those facilities."[9/] The confusion and inconsistency is dispelled, however, when the reference to "the transmission and routing of telephone exchange service and exchange access" is correctly construed as describing the monopoly services offered by incumbent LECs in virtually all local markets.

B. The Commission's Interpretation of Clause (A) Leads To A Competitive Barrier Where None Was Envisioned

It is generally agreed that the interconnection obligations specified in Section 251(c)(2) are intended to open the bottleneck in the local market to competitors. That bottleneck, defined in clause (A) to be the "transmission and routing of telephone exchange service and exchange access," is currently controlled by incumbent LECs.

The interconnection provisions of the 1996 Act, however, are not limited to creating competitive opportunities only in the local market. The Commission correctly recognizes "Congress' desire to establish a national policy framework for interconnection and other issues critical to achieving local competition."[10/] The national policy framework Congress envisioned, however,

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[9/] NPRM at Para. 163.

[10/] NPRM at Para. 37.

extends beyond the local market, as the comments of both Senator Lott and Representative Markey demonstrate:

- "In addressing local and long distance issues, creating an open access and sound interconnection policy was the key objective. .." (Emphasis omitted)[11/]
- "[W]e take down the barriers of local and long distance and cable company, satellite, computer, software entry into any business they want to get in." (Emphasis omitted)[12/]

Congressional leaders did not intend to restrict competitive opportunities to the local market. The Commission's tentative conclusion regarding clause (A), however, leads to just such a restriction because it erects a competitive barrier where none was envisioned. It seeks to compartmentalize the industry even though Congress acted, according to Representative Fields, to "decompartmentaliz[e] segments of the telecommunications industry, opening the floodgates of competition through deregulation, and most importantly, giving consumers choice...."[13/]

11/ Id.

12/ Id.

13/ NPRM at Para. 2.

C. A Preference To Retain The Access Charge Scheme Should Not Drive The Commission To Ignore The Plain Meaning Of Clause (A).

"It is not clear," the Commission correctly recognizes, "that there can be a sustainable distinction between access for the provision of local service and access for the provision of long distance service."[14/] Thus, the Commission believes it "is critically important to reform our interstate access charge rules in the near future."[15/]

That critical reform should be undertaken in this proceeding. Under Section 251(g), the Commission's interstate access charge rules remain in place until "such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment." That section contemplates that the Commission will act to eliminate a competitively-inequitable rate structure that ultimately harms consumers as it continues to bestow upon incumbent LECs revenues that vastly outweigh costs.

Deferring reform requires constructing a regulatory barrier that maintains the existing access charge structure even as the Commission strives to "swiftly introduce

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[14/] NPRM at Para. 146.

[15/] Id.

telecommunications competition."[16/] The Commission creates that barrier with its tentative conclusion that clause (A) limits the incumbent LEC's interconnection obligations to carriers providing local service. That tentative conclusion, moreover, requires that the Commission adopt a regulatory approach that is no longer appropriate under the 1996 Act: rules premised on the identity of the service provider or the nature of the technology used.

The Commission should read Section 251(c)(3)(A) as it reads clauses (B), (C), and (D): each provision is applicable only to the incumbent LEC. If this paragraph is read as a whole, it is clear that the interconnection obligations of incumbent LECs are not dependent upon the type of service to be offered by the provider. As such, interconnection is available to any requesting telecommunications carrier at rates - the Commission correctly notes - that are based on cost and therefore exclude Part 69 access charges.[17/]

[16/] NPRM at Para. 33.

[17/] NPRM at Para. 165.

D. Because The 1996 Act Includes Provisions Designed to Safeguard the Economic Health Of Rural And Small LECs, Explicit Universal Service Support Mechanisms Need Not Be Established Before The Commission Brings Access Rates To Cost.

The Commission may properly construe Section 251(c)(2)(A) without endangering universal service because the 1996 Act safeguards the economic health of those carriers most dependent on universal service subsidies - rural and small LECs. Those safeguards should moot any concern that elimination of the Commission's interstate access charge structure in this proceeding risks universal service.[18/]

These safeguards can remain in place for those rural and small carriers with a demonstrated need until the Commission concludes its universal service proceeding and, inter alia, establishes explicit subsidy mechanisms, as required by the 1996 Act.[19/] All other incumbent LECs should be subject to the duties established in Section 251(c) - including the unrestricted duty to provide

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[18/] The interrelationship of the various proceedings "designed to advance competition, to reduce regulation in telecommunications markets and at the same time to advance and preserve universal service to all Americans" is discussed in the NPRM at Para. 3.

[19/] Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 CC Docket No. 96-45 (rel. Mar. 8, 1996) (Universal Service NPRM) (proposing rules to implement Section 254 of the 1996 Act).

interconnection to "any requesting telecommunications carrier" at rates that exclude Part 69 access charges.

The exemption and suspension provisions of Section 251(f) offer the Commission an interim mechanism applicable to those carriers most likely to require assistance: rural telephone companies and small local exchange carriers - those with less than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide. For these carriers, the economic burden of complying with the Commission's interconnection rules is a factor state commissions must consider when assessing requests for exemption, suspension, or modification.

Under Section 251(f)(1), rural telephone companies (as defined in the 1996 Act) are exempted from the obligations of Section 251(c); such companies need not comply until (1) receipt of a bona fide request for interconnection, services, or network elements and (2) satisfaction of certain criteria, including a state determination that the rural LEC's compliance with that request for interconnection is "not unduly economically burdensome." Thus, until receipt of bona fide request, rural LECs could continue to adhere to the existing interstate access charge rules.

Under Section 251(f)(2), small carriers may petition a state commission for a suspension or modification "of the application of a requirement or requirements of subsection

(b) or (c) to telephone exchange facilities." As it must do with rural carriers, the state is to consider whether compliance is "unduly economically burdensome" for these small carriers.

E. The Commission's Interpretation of Clause (A) Protects Incumbent LECs At The Expense Of Consumers.

The Commission's tentative conclusion that incumbent LECs need provide interconnection only to carriers providing local service is fundamentally inconsistent with consumer interests. Most notably:

- Under that conclusion, IXCs must continue to pay inflated interstate access charges. Consequently, it ensures that long-distance rates remain near current levels - at least until the Commission concludes its promised interstate access charge reform proceeding.
- Retaining inflated access charges constitutes continued subsidization of those incumbent LECs that have failed to demonstrate any need for a universal service subsidy. These LECs are free to use these revenues to impede competitive entry, thereby indirectly minimizing a consumer's choice with respect to telecommunications providers.

- It directly minimizes consumer choice because it precludes interested consumers from purchasing end-to-end consumer long distance service.

The Commission states that it intends to adopt national rules in this proceeding that are designed to secure the full benefits of competition for consumers.[20/] The task before the Commission is immense: to craft those rules so as to "remov[e] statutory and regulatory barriers and economic impediments, [to permit] efficient competition to occur wherever possible, and [to replicate] competitive outcomes where competition is infeasible or not yet in place."[21/]

Much of the Commission's NPRM demonstrates a remarkable grasp of what such rules require. The Commission, however, should reconsider its proposal to limit the incumbent LEC's interconnection obligations to local competitors. Contrary to the Commission's stated objectives, that proposal, which is premised on an erroneous interpretation of Section 251(c)(2)(A): (1) erects a regulatory barrier, (2) retains an economic impediment, (3) discourages efficient competition, and (4) is at odds with efforts designed to replicate a competitive environment. Each of these outcomes diminishes consumer benefit.

[20/] NPRM at para. 26.

[21/] NPRM at para. 12.

II. COMMENTS REGARDING SECTION II.A: Scope Of The Commission's Regulations

The Commission's Proposal To Establish National Standards Maximizes The Development Of Competition, Thereby Ensuring Consumer Benefit

The Commission correctly recognizes that explicit national rules serve a number of purposes, including "minimiz[ing] variations among states in implementing Congress' national telecommunications policy and guid[ing] states that have not yet adopted the competitive paradigm of the 1996 Act."[22/]

The Commission also correctly recognizes that a high level of technical uniformity promotes competitive entry and produces significant cost efficiencies for service providers - including incumbent LECs.[23/] Given these conclusions, consumers are likely to experience a range of potential benefits flowing directly and indirectly from explicit national rules, including increasing competitive options, decreasing rates, and more rapid introduction of competitive local systems throughout the country.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to further its goal of ensuring that consumers benefit from an increasingly competitive

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22/ NPRM at Para. 28.

23/ NPRM at Para. 30.

environment by taking action consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cassandra L. Hall, a secretary in the law firm of Keller and Heckman, hereby certify that a copy of the foregoing was served by hand-delivery on this 16th day of May, 1996, to the following:

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